

**TRI-PARTY AGREEMENT BETWEEN
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION,
LEON COUNTY, FLORIDA AND
BLUEPRINT 2000**

This Agreement is entered into on _____, 2004, by the Florida Department of Transportation, District Three, referred to as the DOT, Leon County, referred to as the COUNTY, and Blueprint 2000, referred to as BLUEPRINT.

RECITALS

1. DOT plans to acquire for the COUNTY, either by purchase or condemnation, right-of-way for the construction of a storm water pond and drainage ditch referred to as ROW.
2. DOT plans to acquire local road right-of-way for the intersection improvements associated with Capital Circle roadway construction. The right-of-way extending outside of the limits for Capital Circle will be acquired in the name of and title granted to the local government having jurisdiction.
3. DOT acquired, prior to this agreement, property adjoining the ROW, referred to as the BRITTLE POND (Pond 1 on the construction plans for the PROJECT), which was acquired for construction of a storm water pond for the DOT project on Capital Circle Northwest, referred to as the PROJECT.
4. The ROW and the BRITTLE POND will be combined for the construction of a COUNTY regional storm water facility, referred to as the Regional Storm Water Facility.
5. The COUNTY will own and maintain the Regional Storm Water Facility, subject to an easement conveyed to DOT for the PROJECT's storm water volumes.
6. BLUEPRINT shall provide sufficient funds to DOT for the acquisition of the ROW.
7. Section 334.044, Florida Statute (2000), authorizes the DOT to enter into this agreement.
8. The COUNTY, by a vote of the County Commissioners on _____, 2004, _____ has authorized its appropriate official to enter into this agreement (a copy of the minutes is attached as Exhibit A).
9. BLUEPRINT, by a vote of its directors, has authorized its appropriate official to enter into this agreement (a copy of the minutes is attached as Exhibit B).

The parties agree as follows:

1. The preceding recitals are incorporated into this Agreement.

2. (a) DOT will provide acquisition services and legal services to acquire the ROW, which is described in Exhibit C. The COUNTY authorizes DOT's attorneys, including attorneys under contract with DOT, to represent the COUNTY in any eminent domain action necessary for condemnation of the ROW.
- (b) The COUNTY will timely execute any documents that are required to be executed by the COUNTY for the acquisition of the ROW, including resolutions and pleadings necessary in eminent domain actions. The COUNTY will make available, at settlement conferences and mediations, a person who can bind the COUNTY to settlement agreements.
- (c) In addition to acquiring the ROW, the DOT will make an effort to acquire, for the COUNTY, property adjoining the ROW, described in Exhibit D, to be used by the COUNTY as a greenway. The DOT will notify the COUNTY and BLUEPRINT if the greenway property can be purchased, and, if BLUEPRINT deposits the estimated acquisition costs, DOT will proceed with the acquisition.
- (d) The COUNTY and BLUEPRINT will provide adequate representation at meetings held by DOT to apprise the parties of its progress in acquiring the ROW.
3. (a) DOT will provide to BLUEPRINT an estimate of the costs of the ROW. The actual final costs of the ROW might change as negotiations and litigation progress. Costs of the ROW include, but are not limited to, the following: all payments to owners, including severance damages, business damages, and relocation costs; court costs, attorney fees, appraisal fees, engineer fees, accountant fees, land planner fees, and market study fees incurred by DOT and owners; and other costs incurred by DOT for the acquisition.
- (b) BLUEPRINT agrees that it will, at least fourteen calendar days after DOT notifies BLUEPRINT of the estimated costs, deposit the amount of the estimate as provided in paragraph 5. After the deposit, the DOT will proceed with the acquisition of the ROW.
- (c) If, at any time prior to litigation, the DOT determines that the costs of the ROW will exceed the estimate, the DOT will prepare a revised estimate. Within fourteen calendar days after DOT notifies BLUEPRINT of the revised estimate, BLUEPRINT will notify DOT of whether or not it elects to proceed.
- (d) If BLUEPRINT elects not to proceed, the parties will have no further obligations until funds are available, except for a final accounting as provided in paragraph 7.
- (e) If BLUEPRINT elects to proceed, it will provide an additional deposit for the increase in the estimate. The additional deposit will be made within fourteen calendar days after BLUEPRINT elects to proceed. After the deposit is made, the DOT will proceed with acquisition of the ROW.

4. (a) If litigation is necessary, in each case filed, DOT will have to make an OT deposit within 20 days of the order of taking, or the taking fails. Therefore, if the required OT deposit exceeds the amount of funds previously deposited by BLUEPRINT, BLUEPRINT will make the additional deposit, equal to the excess, within five calendar days of receiving notice from DOT. If the deposit is not made, as provided in paragraph 5, in time for DOT to make a timely OT deposit, the parties will have no further obligations until funds are available, except for a final accounting as provided in paragraph 7.

 (b) Litigation of a right of way parcel cannot be dismissed at DOT's discretion after an OT deposit is made. After an OT deposit is made, the case proceeds through mediation or, in some cases, jury trial, to determine the final compensation to be paid to the owner. The final compensation to be paid can be difficult to estimate, because of the uncertainties of litigation after the OT deposit. Because of these uncertainties and the lack of discretion to dismiss, if at any time during the litigation the DOT determines, at its sole discretion, that the funds deposited will not be adequate to pay the costs of the ROW, BLUEPRINT will have the absolute obligation to make the additional deposit necessary to pay the increase, regardless of the amounts previously deposited or expended and regardless of the amount of the increase. The amount of the increase will be deposited within fourteen days of DOT's notice to BLUEPRINT.

 (c) The provisions in this paragraph shall prevail, notwithstanding any other provisions of this agreement.
5. All payments for ROW costs under this agreement will be deposited by BLUEPRINT as provided in the attached Exhibit E, a Memorandum of Agreement between BLUEPRINT and the State of Florida, Department of Insurance, Division of Treasury. Interest accrued and received will be treated as funds advanced by BLUEPRINT for project funding purposes.
6. Neither DOT nor the COUNTY will be required to reimburse BLUEPRINT for any funds advanced pursuant to this agreement, except for excess deposits as provided in paragraph seven.
7. If the final total costs of ROW are less than the total deposits made by BLUEPRINT, a refund of the excess will be made by the DOT to BLUEPRINT in accordance with Section 215.422, Florida Statutes (2001). If the final total costs of ROW are greater than the total deposits to date, BLUEPRINT will pay the additional amount within fourteen calendar days from the date of the invoice. BLUEPRINT agrees to pay interest, at a rate established pursuant to Section 55.03, Florida Statutes (2001), on any deposit required after the OT deposit is made, that is not paid within the time specified, to be calculated from the final due date until the invoice is paid.
8. The DOT agrees to keep complete records and accounts of all costs of the ROW. BLUEPRINT reserves the right to conduct any necessary audits of the records pertaining to this agreement.

9. BLUEPRINT and the COUNTY will be entitled to be advised, upon request, of the status of work being done by the DOT. Any party to the Agreement may request and be granted a conference.
10. (a) Upon completion of the PROJECT construction, DOT will convey the BRITTLE POND to the COUNTY. However, the conveyance to the COUNTY will not be made until the Storm Water Facility Operating permit has been issued by the COUNTY and the Board of County Commissioners has approved the acquisition in compliance with County Policy 03-01.

(b) The COUNTY will convey to DOT, simultaneously with DOT's conveyance of the BRITTLE POND, an easement in the REGIONAL STORM WATER FACILITY for either 6.86 acre-feet (6.03 for the PROJECT and .83 for future projects) of storm water treatment volume, which is for the treatment of 82.32 acres (72.32 acres for the PROJECT and 10 acres for future projects) of roadway related area, or the storm water volumes required by the permitting authorities, whichever is greater.

(c) The recording in the official records by the DOT of documents transferring the ROW and the BRITTLE POND will be the responsibility of the DOT.
11. The intent is that the Regional Storm Water Facility will be owned and maintained by the COUNTY. The County Chief of Stormwater Engineering will provide written acceptance of the design and document that County Public Works can maintain the facility as designed and permitted.
12. Notices to the parties should be sent to the following addresses:

Tony Park, P.E., Director of Public Works
Leon County Dept. of Public Works
2280 Miccosukee Road
Tallahassee, FL 32308
13. The following provisions of Section 339.135(6)(a), Florida Statutes (1999), are incorporated:

The DOT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection shall be null and void, and no money may be paid on such contract. The DOT shall require a statement from the Comptroller of the DOT that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DOT which are for an amount in excess of \$25,000.00 and which have a term for a period of more than 1 year.

14. This agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings. There are no commitments, agreements or understandings concerning the subject matter of this agreement that are not contained in this document. No deviation from the terms of this agreement shall be predicated upon any prior representation or agreements, whether oral or written. No modification, amendment, or alteration in the terms or conditions of this agreement shall be effective unless contained in a properly executed written document.
15. This agreement shall not be more strictly construed against either party by reason of the fact that one party may have drafted or prepared any or all of the terms and provisions hereof.

LEON COUNTY, FLORIDA

BY: _____
TITLE: Jane Sauls, Chairman
Board of County Commissioners

ATTEST:
Bob Inzer, Clerk of the Court
Leon County, Florida

BY: _____

APPROVED AS TO FORM:
Leon County Attorney's Office

BY: _____
Herbert W. A. Thiele, Esq.
County Attorney

STATE OF FLORIDA
DOT OF TRANSPORTATION

BY: _____
TITLE: DISTRICT SECRETARY

Legal Approval:

BLUEPRINT 2000

BY: _____
TITLE: _____

Legal Approval:
